LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
JUN 13 1958
JOHN T. FEY, Clerk

In the Supreme Court
OF THE
United States

October Term, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,
Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,
Appellees.

APPELLANTS' ANSWER TO MOTION TO DISMISS APPEAL.

HENRY W. ROBINSON,
1060 Mills Tower,
San Francisco 4, California,
Attorney for Appellants.

COURTNEY L. MOORE,
HERBERT POTHIER,
1060 Mills Tower,
San Francisco 4, California,
Of Counsel.

Subject Index

I. Page

Reply to the contention that the federal question sought to be reviewed was not timely or properly raised 2

II.

The appeal presents substantial federal questions..... 3

III.

Statute of limitations 8

Conclusion 12

Table of Authorities Cited

Cases Pages

Bandini Petroleum Company, et al. v. Superior Court of the State of California, 284 U.S. 8, 76 L.Ed. 826..... 11

Barclay, et al. v. Howell's Lessee, 6 Peters 497, 8 L.Ed. 477 9

Belcher Refining Co. v. St. Louis Elev. Co., 82 Mo. 121.... 8

Bernstein v. Bush, 29 C.2d 773, 117 P.2d 913 11

Brown v. The Inhabitants of Peabody, 116 NE 958..... 4

Callahan v. Martin, 3 C.2d 110, 43 P.2d 788, 101 A.L.R. 871 11

Cherokee Nation v. So. Kansas R.R. Co., 135 U.S. 641, 34 L.Ed. 295 9

Cincinnati v. Vester, 33 Fed. Rep. 2d 242 8

Dabney-Johnston Oil Corp. v. Walden, 4 C.2d 637, 52 P. 2d 237 11

Davis v. Wechsler, 63 U.S. 22, 68 L.Ed. 143 3

First National Bank of Guthrie Center v. Anderson, 269 U.S. 341, 70 L.Ed. 295 2

Fox River Paper Co. v. Railroad Commission of Wisconsin, 71 L.Ed. 1279 9

Grand River Dam Authority v. Grand-Hydro Co., 93 L.Ed. 64 9

Hanson Lumber Co. v. U.S., 261 U.S. 581, 43 Sup. Ct. 442, 67 L.Ed. 809 9

Harris v. Elliott, 10 Peters 25, 9 L.Ed. 333 9

	Pages
In re Nolta's Estate, 56 NY Supp. 2d 818	4
Kansas City v. Hyde, 96 S.W. 201, 113 Am. State Reports 766	5
Kennedy v. City of Indianapolis, 103 U.S. 599, 26 L.Ed. 550	9
La Laguna Ranch Co. v. Dodge, 18 C.2d 132, 114 P.2d 351, 135 A.L.R. 546	11
Levell v. City of Griffin, 308 U.S. 444, 82 L.Ed. 949	3
Mohawk Oil Co. v. Hopkin, 196 C. 148, 236 P. 133	11
People v. Associated Oil Co., 211 C. 93, 294 P. 717	11
People v. Thompson, 43 C.2d 13	4
Schuylkill Trust Co. v. Commonwealth of Penna., 296 U.S. 113, 80 L.Ed. 91	3
Secret Valley Land Co. v. Perry, 187 Cal. 420	12
Sherman v. Sherman, 122 NW 439	4
State v. Laverack, 34 N.J.L. 201	8
Staub v. City of Baxley, 355 U.S. 309, 2 L.Ed. 302, 78 S.Ct. 277	2, 9
Truax v. Corrigan, 257 U.S. 312, 62 L.Ed. 654	2
Vandalia Railroad Co. v. State of Indiana, 52 L.Ed. 246	9
Ventura County v. Barry, 207 C. 189, 277 P. 333	11
Ward v. Board of Commissioners of Love County, 253 U.S. 17, 64 L.Ed. 751	3
Western Oil & Ref. Co. v. Venago Oil Corp., 218 C. 733, 24 P.2d 971, 88 A.L.R. 1271	11

Codes

Code of Civil Procedure, Section 1239	4

Constitutions

United States Constitution, Fourteenth Amendment	7

Rules

Rules on Appeal, Rule 15(2)d	3

Texts

26 C.J.S. page 807	4
3 Nichols on Eminent Domain, pages 192 and 214	9

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 952

MYRTLE MAY DUNN, ALVIN D. DUNN and CITIZENS NATIONAL TRUST & SAVINGS BANK OF LOS ANGELES, Executors of the Estate of A. M. Dunn, Deceased; and MYRTLE M. DUNN,
Appellants,

vs.

COUNTY OF LOS ANGELES, a Body Corporate and Politic, and THE TEXAS COMPANY, a corporation,
Appellees.

APPELLANTS' ANSWER TO MOTION TO DISMISS APPEAL.

Appellees' Motions to Dismiss are based upon three grounds: (1) the Federal question sought to be reviewed was not timely and properly raised, (2) the Appeal does not present a substantial Federal question and (3) the Judgment rests on an adequate non-federal ground.

I.

REPLY TO THE CONTENTION THAT THE FEDERAL QUESTION SOUGHT TO BE REVIEWED WAS NOT TIMELY OR PROPERLY RAISED.

In our Statement of Jurisdiction (pages 14-16) we outlined the allegations of the complaint, which by ultimate fact allegations asserted the constitutional violations of which we complain, which presentation was followed by a summary of the Points and Authorities (pages 16-22) urged before the Appellate Courts. No exceptions have been taken to such summation, other than the claim that the constitutional question was not presented in the trial Court.[1]

The trial Court (Tr. pages 84-5) rendered a judgment on the pleadings, which is equivalent to a judgment on demurrer, as a result of which the allegations of the complaint, in effect, become findings of fact.

Whether a complaint, as tested by demurrer, sets up a sufficient right of action grounded on the constitution is necessarily a question of Federal law, and where a case coming from a state court presents this question, the Supreme Court will determine for itself the sufficiency of the allegations, displaying the constitutional right, and is not concluded by the view taken by the state court.[2]

---

[1]The County of Los Angeles in its Answer restated the constitutional question found in the Complaint:

". . . the defendant County of Los Angeles had the right to acquire the entire fee simple title to said property and that such fee simple title included the right to extract any and all oil and gas or other minerals underlying said land". (p. 8, lines 1 to 9.)

[2]*Truax v. Corrigan*, 257 U.S. 312, 62 L.Ed. 654; *Staub v. City of Baxley*, 78 S.Ct. 277; *First National Bank of Guthrie Center*

When the complaint is judged by these standards, it appears the constitutional questions were not only properly raised in the trial Court, but it is admitted by both appellees that the constitutional questions were distinctly asserted in the District Court of Appeal of the State of California, which is sufficient to satisfy Rule 15(2)d of the Rules on Appeal.

II.

THE APPEAL PRESENTS SUBSTANTIAL FEDERAL QUESTIONS.

Although the County of Los Angeles admits (page 12) that the ten Federal questions stated and epitomized in the Statement of Jurisdiction (pages 7 to 10) were not "expressly passed upon by the Courts of California," appellees now attempt to bypass the consideration of the Federal questions, by claiming—that the appellants' deed to the County was a grant of fee title, which fee title included the oil rights, and that the extent of the interest which was conveyed is solely a matter of local law (L.A., page 6; Tex. page 6), for the reason that under the State law a grant deed is a final memorial of title invulnerable to attack by evidence showing that it conveyed a lesser estate than a fee title. The California court, however, did not base its decision on any such doctrine, for it was never mentioned in the Opinion.

---

v. *Anderson*, 269 U.S. 341, 346, 70 L.Ed. 295; *Schuylkill Trust Co. v. Commonwealth of Penna.*, 296 U.S. 113, 122-3, 80 L.Ed. 91; *Levell v. City of Griffin*, 308 U.S. 444, 450, 82 L.Ed. 949; *Davis v. Wechsler*, 63 U.S. 22, 24, 68 L.Ed. 143; *Ward v. Board of Commissioners of Love County*, 253 U.S. 17, 22, 64 L.Ed. 751.

The California court applied an entirely different doctrine of law in interpreting and construing the deed, which doctrine was unquestionably correct and proper. It is the law, that—when a deed is given under the authority of a statute, the title passing is the statutory title granted by the Legislature, and the grantee can only obtain such title as is necessary for the statutory purpose. This doctrine is simply stated in 26 *C. J. S.* p. 807:

> "A special statutory provision from which a deed derives all of its validity will be construed into and with the deed "[3]

The California court applied this doctrine by analyzing (Appendix pp. xiii to xvi) the Industrial Farm Act and *C.C.P.* 1239 (The California condemnation statutes), thus reaching the conclusion that the County of Los Angeles, under these enabling statutes, was entitled to condemn or purchase the fee title, including the oil rights, and stated, in answer to appellants' claim that the deed did not convey the oil rights, that it did (referring to the prior analysis of the California statutes) for:

> "As above stated, the County was empowered to acquire the fee title by condemnation or purchase. A fee title includes the oil rights."

Since the court based the validity of the deed upon the premise that the county was empowered under the California condemnation statute (*C.C.P.* 1239) and

---

[3] *Sherman v. Sherman*, 122 NW 439, 442; *In re Nolta's Estate*, 56 NY Supp. 2d 818; *Brown v. The Inhabitants of Peabody*, 116 NE 958, 959; *People v. Thompson*, 43 Cal. 2d 13.

the Prison Farm Act to acquire the fee title by condemnation or purchase, a Federal question is involved, namely, did the county have such power? This question is not a matter of local law, for the validity or interpretation of such statute are Federal questions, if it is claimed—that either the statute itself, or the interpretation placed thereon, violates the prohibitions of the 14th Amendment.

Moreover, this right to condemn or purchase the oil rights was not based by the court on any express language found in the Prison Farm Act, but was based on the theory that the taking or acquiring of these oil rights was a convenience in connection with the operation of the public use outlined in the Prison Farm Act. The California court said:

> "Even though the county could have taken the fee by condemnation, it was not required as a matter of law to take the oil rights, and it could have allowed a reservation of the rights. However, as a matter of policy or efficiency in preventing the escape of prisoners, the county might have considered that it should not allow a reservation of oil rights which might interfere with the security of the prison."

We attacked such claim on the ground that the subsequent disposition of these oil rights to The Texas Company conclusively proved that the taking was not necessary to fulfill the public use. The California Court recognized that such an attack was made. We quote from its opinion:

> "Appellants argue further that the taking of the oil rights was not necessary in order to protect

> the property for use as a prison farm, and that the representation by the county's agents that the taking of the rights was necessary for such protection was false."

Even if a subordinate governmental agency, such as a Board of Supervisors of a county, has the discretionary power to determine the extent of title necessary to be taken in order to properly service the public use outlined in the legislative enactment, nevertheless such power must be honestly exercised and not exercised for the purpose of avarice and gain. The leasing of these same oil rights to The Texas Company establishes beyond debate that the assertions of the county officials were false and untrue and a misstatement of the law, and that any discretionary power so exercised was not exercised in the furtherance of the public use, but for the private gain of the county. The Supreme Court of Missouri when faced with this same problem (*Kansas City v. Hyde*, 96 S.W. 201, 113 *Am. State Reports* 766) stated:

> "Could the city council by a false recital in the ordinance give it validity which it would not have if it recited the truth, and when the city comes to ask the aid of the court to carry the ordinance into effect, is it possible that the court must be a mere tool to do the will of the council with no power to inquire into the truth of the matter? What protection has a citizen for his private constitutional rights if the courts cannot look through a sham and see the truth, and how can the courts learn the truth if they must take the recitals in the ordinance as conclusive and reject all evidence to show their untruth."

Therefore, when this problem is stripped of its non-essentials, the simple question is presented: Did the Legislature of the State of California, in passing the Prison Farm Act, authorize the various counties of the state to acquire, either by condemnation or purchase, the underlying mineral rights, including oil, when the public use to be served was the rehabilitation of prisoners by farming in the open air, and where only the surface of the ground was required to service this use? And, if the Legislative enactment did so empower the counties, is not this Legislative enactment violative of the 14th Amendment? The law on this subject is to be found in Appellants' Statement of Jurisdiction (pages 17 to 22). This is a Federal question as distinguished from a state question, and the fact that the County may have obtained a deed by erroneous statements as to the law and without paying compensation does not reduce this Federal question to a state question of interpreting and construing the deed.

We submit that substantial Federal questions are presented on this appeal, and appellees cannot, at this late date, hide behind the claim that the only question involved is—the extent of interest conveyed by the customary deed, given in accordance with the general law of the state relating to deeds between private individuals, when the deed in the present case derived its validity, not from the general law, but from a special statutory enactment, which statute is construed into and with the deed.

III.

STATUTE OF LIMITATIONS.

An underlying rule of eminent domain is that where private property is condemned for one public use, it cannot be appropriated to another and different use. It is admitted by the pleadings that this property was purchased under threat of condemnation for one public use, to-wit, the maintenance of a prison farm for agricultural purposes exclusively. There was never any condemnation or purchase of said property for any other use. When the County of Los Angeles allowed The Texas Company the use of said property for oil exploration, it abandoned the original use, and this abandonment took place admittedly on August 22, 1950.

> "Where private property is condemned or dedicated for one public use, it cannot be appropriated to another and different use, or be appropriated to private use. Where the city of St. Louis condemned private property for use as a wharf, it cannot lease it unconditionally for a term of years to be used in the prosecution of private business and for private gain."
>
> *Belcher Refining Co. v. St. Louis Elev. Co.*, 82 Mo. 121.

See also:

State v. Laverack, 34 N.J.L. 201;

Cincinnati v. Vester, 33 Fed. Rep. 2d 242.

When the public use under which property is acquired is subsequently discontinued or abandoned, in whole or in part, and the property thereafter is devoted to a private use inconsistent with the original

public use for which the property was dedicated, the title and right to possession reverts to the original landowner.

Barclay, et al. v. Howell's Lessee, 6 Peters 497, 8 L.Ed. 477;

Harris v. Elliott, 10 Peters 25, 9 L.Ed. 333;

Nichols on Eminent Domain, Vol. 3, pages 192 and 214.

The Statute of Limitations is not applicable as the owner is protected by the rule that title does not pass until compensation has been ascertained and paid.

Kennedy v. City of Indianapolis, 103 U.S. 599, 604, 26 L.Ed. 550, 553;

Cherokee Nation v. So. Kansas R.R. Co., 135 U.S. 641, 34 L.Ed. 295, 303;

Hanson Lumber Co. v. U.S., 261 U.S. 581, 587, 43 Sup. Ct. 442, 444, 67 L.Ed. 809.

It is further the rule that when a complaint sets up violations of rights granted or protected by the Constitution of the United States and such violations are presented to a state court, that the plaintiffs are then entitled to invoke the jurisdiction of the United States Supreme Court where the state court has denied these rights or failed to give them due recognition. This right is not defeated even though there is an apparent effort by the state court to avoid the constitutional issue by inserting in the Opinion a purported local issue.[4]

---

[4] *Fox River Paper Co. v. Railroad Commission of Wisconsin,* 71 L.Ed. 1279, 1283-4; *Vandalia Railroad Co. v. State of Indiana,* 52 L.Ed. 246; *Grand River Dam Authority v. Grand-Hydro Co.,* 93 L.Ed. 64; *Staub v. Baxley,* 355 U.S. 309, 2 L.Ed. 302.

The Court, in holding that the deed conveyed fee title, in effect held that the appellants did not and never had a cause of action. A ruling on the Statute of Limitations was unnecessary if this holding was sound, for the reason that a Statute of Limitations plea is based on the doctrine that the plaintiff had a cause of action which he had lost through the passage of time. We maintain that the holding relative to the Statute of Limitations was inserted in the state court's decision for the sole purpose of preventing appellants from invoking the jurisdiction of this Court on the constitutional questions which were ignored by the state court.

The state court recognized that oil rights are regarded as an interest or estate in real property and that an action for recovery of real property must be commenced within five years. It says (Appendix p. xx):

> "As asserted by appellants, oil rights are regarded as an interest in real property. (See *Bernstein v. Bush*, 29 Cal.2d 773, 778 (177 P.2d 913); *Standard Oil Co. v. J. P. Mills Organization*, 3 Cal.2d 128, 132-133 (43 P.2d 797); *Carlson v. Lindauer*, 119 Cal.App.2d 292, 302 (259 P.2d 925).)"
>
> * * *
>
> "If the action be regarded as one to recover oil rights (an interest in real property) it is barred by section 319 of the Code of Civil Procedure (five years)";

It was appellants' position that since the first invasion of plaintiffs' rights to the oil, through the

medium of production thereof, occurred on August 22, 1950 and since the complaint was filed August 18, 1955, it was filed within five years after the original entry. The California Court admits that the five-year statute applies but it attempts to evade its effect by stating (Appendix xxi) that it appears that on June 7, 1950 the Dunns knew that the county and The Texas Company had entered into an oil lease on April 20, 1950. In other words, the court places the time of the commencement of the running of the Statute of Limitations as of June 7, 1950 when the Dunns had knowledge that the county had made an oil lease to The Texas Company and not as of August 22, 1950, when the production of oil commenced. There are two answers to this statement (1) the court disregarded the established law applicable to oil in California, which is—that oil being of a fugitive character title does not attach until the oil has been brought to the surface and reduced to possession.[5] This principle of California oil law was the basis of the decision in *Bandini Petroleum Company, et al. v. Superior Court of the State of California*, 284 U.S. 8, 76 L.Ed. 826, 832, which involved a conservation measure, where this court states that under the law of California: "On account of the self-propelling or migratory character

---

[5] *Mohawk Oil Co. v. Hopkins*, 196 C. 148, 236 P. 133; *Ventura County v. Barry*, 207 C. 189, 277 P. 333; *People v. Associated Oil Co.*, 211 C. 93, 294 P. 717; *Western Oil & Ref. Co. v. Venago Oil Corp.*, 218 C. 733, 24 P.2d 971, 88 A.L.R. 1271 (disapproved on another point in *La Laguna Ranch Co. v. Dodge*, 18 C.2d 132, 114 P.2d 351, 135 A.L.R. 546); *Callahan v. Martin*, 3 C.2d 110, 43 P.2d 788, 101 A.L.R. 871; *Dabney-Johnston Oil Corp. v. Walden*, 4 C.2d 637, 52 P.2d 237; *Bernstein v. Bush*, 29 C.2d 773, 117 P.2d 913.

of natural gas as well as oil" the owner of the surface does not have an absolute title to the oil and gas beneath and could only acquire such title when he had reduced these substances to possession; (2) The making of the lease on June [illegible]195 at the utmost merely created a cloud on the Dunns' title to the oil rights and, until such claim was asserted in such a manner as to jeopardize the rights of the owners to the property, no cause of action accrued.

Secret Valley Land Co. v. Perry, 187 Cal. 420, 426.

The claimed Statute of Limitations therefore, did not commence to run until there was an invasion of the plaintiffs' property which occurred for the first time when The Texas Company reduced this migratory oil to ownership, which makes it quite apparent that the California State Court's decision on the Statute of Limitations was contrary to its previous decisions and that the sole purpose was to insert a local issue to prevent our appeal to this Honorable Court.

CONCLUSION.

We submit that substantial Federal questions of great importance are presented by the record in this appeal and that appellees cannot hide behind the claim that the only question involved is the extent of interest conveyed by the usual deed absolute given in accordance with the general law of the state relating to deeds between private individuals. The present deed was a special type of deed which derived its validity from a

special statutory enactment which is read into and becomes a part of the deed and controls its interpretation and construction. Finally, the state court cannot prevent the consideration of these federal questions by unnecessarily inserting in its opinion a local issue, which local issue was obviously decided contrary to established law.

Dated, San Francisco, California,
June 11, 1958.

Respectfully submitted,
HENRY W. ROBINSON,
Attorney for Appellants.

COURTNEY L. MOORE,
HERBERT POTHIER,
Of Counsel.